(Oral Argument Not Yet Scheduled)
No. 21-5096

In the United States Court of Appeals
For the District of Columbia Circuit

STATE OF ILLINOIS AND STATE OF NEVADA,

Plaintiffs-Appellants,

v.

DAVID FERRIERO, in his official capacity as Archivist of the United States,

Defendant-Appellee,

STATE OF ALABAMA, STATE OF LOUISIANA, STATE OF NEBRASKA, STATE OF SOUTH DAKOTA, AND STATE OF TENNESSEE,

Intervenors for Defendant-Appellee.

On Appeal from the United States District Court for the District of Columbia
No. 20-cv-00242-RC

BRIEF OF GREGORY WATSON AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLEE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel of record certifies as follows:

A. Parties and Amici. Except for the following, all parties, intervenors, and amici appearing before the district court and in this Court are listed in the Briefs for Plaintiffs-Appellants and Defendant-Appellee:

Gregory Watson – Amicus Curiae in support of Defendant-Appellee.

B. Rulings Under Review. References to the ruling at issue appear in the Brief for Plaintiffs-Appellants.

C. Related Cases. To amicus's knowledge, there are no related cases.

Respectfully submitted,

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GLOSSARY OF ABBREVIATIONS

amend. ..... Amendment

Cong. ..... Congress

Const. . ..... Constitution

ERA ..... Equal Rights Amendment

H.R.J. ..... House Resolution (Joint)

Ill. ..... Illinois

J. ..... journal

L. Rev. ..... law review

Leg. ..... Legislature

N.D. ..... North Dakota

Nev. ..... Nevada

Res. ..... Resolution

S. Con. Res. ..... Senate Concurrent Resolution

S.J. Res. ..... Senate Joint Resolution

Wm. & Mary ..... William and Mary

Va. ..... Virginia

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Gregory Watson is the person who led the campaign to ratify the 27th Amendment of the United States Constitution from 1982 until 1992. Watson currently works as a legislative policy analyst for the Texas Legislature in Austin, Texas. He has an interest in this case because those who have pushed for the ratification of the Equal Rights Amendment ("ERA") have drawn on his work, but he does not believe that the ERA was (or even could be) ratified in the same way that the 27th Amendment could.

STATEMENT OF FACTS[2]

In 1982, as a student at the University of Texas at Austin, Watson was writing a paper for a Government 310L class as to whether Congress, in 1978, possessed authority to extend the previously-agreed-to ratification deadline for the state legislatures to consider and cast votes upon the proposed 1972 Equal Rights Amendment ("ERA"), to the United States Constitution, from an original deadline of March 22, 1979, to a revised deadline of June 30, 1982. During the course of searching for an answer to that question, he stumbled upon a library book which

[1] All parties have consented to the filing of this brief. Rule 29(a)(2), Fed. R. App. P; D.C. Cir. R. 29(b). Counsel for a party did not author this brief in whole or in part, and no such counsel or party made any monetary contribution to fund the preparation or submission of this brief. No person or entity other than *Amicus Curiae* and their counsel made a monetary contribution to fund the preparation or submission of this brief.

[2] Watson has executed an affidavit, attached in the appendix to this brief, attesting to these facts.

mentioned a proposed amendment from the year 1789 reading: "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." Watson realized that this 1789 proposal was technically still pending before the state legislatures for ratification but had not yet received the votes of the required number of state legislatures in order to become part of the Federal Constitution.

Watson abruptly dropped the 1972 ERA and switched the topic of his paper instead to the 1789 Congressional Compensation Amendment. In his paper, he argued that the 1789 measure was still pending before the state legislatures and that it was still needed as a means to curb abuses by Congress in granting itself increases in its members' compensation. He received a grade of "C" on his paper and then decided to launch a letter-writing campaign to gain the Congressional Compensation Amendment's incorporation into the Federal Constitution, which was accomplished in 1992 when Alabama, the 38th state legislature, finally ratified it, and it thereby became the 27th Amendment to the U.S. Constitution.

Watson's story became well known across the country and across the world. *See, e.g.,* Scott Bomboy, *How a College Term Paper Led to a Constitutional Amendment*, National Constitution Center (May 7, 2021), https://constitutioncenter.org/blog/how-a-c-grade-college-term-paper-led-to-a-constitutional-amendment; *Twenty-Seventh Amendment*, Encyclopedia Britannica,

https://www.britannica.com/topic/Twenty-seventh-Amendment (last visited Mar. 8, 2022). Although James Madison originally wrote the 27th Amendment and is therefore its "father," Watson's efforts to ratify the 27th Amendment earned him the title of "the stepfather of the Twenty-seventh [A]mendment[.]" Richard B. Bernstein, *The Sleeper Wakes: The History and Legacy of the Twenty-Seventh Amendment*, 61 Fordham L. Rev. 497, 497 n.* (1992).

Supporters of the 1972 ERA have pointed to Watson's accomplishment in adding the 27th Amendment into the Federal Constitution as justification for them to persuade state lawmakers in Nevada, Illinois and Virginia to belatedly approve the 1972 ERA in 2017, 2018 and 2020, respectively. *See, e.g.*, Allison L. Held et al., *The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States*, 3 Wm. & Mary J. of Race, Gender, and Social Justice 113, 117-23 (1997) (drawing on the acceptance of the 27th Amendment to argue that the ERA should be accepted as well); Roberta W. Francis, *What Is the Three-State Strategy for ERA Ratification?*, Alice Paul Institute, https://www.equalrightsamendment.org/faq (last visited Mar. 8, 2022) (discussing the three-state strategy in light of the 27th Amendment's unorthodox ratification). The Nevada, Illinois, and Virginia legislatures explicitly drew on his work as well. S.J. Res. 2, 79th Leg. (Nev. 2017); S.J. Res. Const. amend. 4, 100th Leg. (Ill.

2018); S.J. Res. 284, 161st Leg. (Va. 2020).[3] The critical question in this case is whether the ERA may be ratified in a manner similar to the way that the 27th Amendment was.

ARGUMENT

According to Watson's research, the first time that the U.S. Congress established a deadline upon the ratification of a proposed Federal Constitutional Amendment was when the 65th Congress, in the year 1917, offered to the state legislatures for ratification what we know today as the Federal Constitution's 18th Amendment and stipulated that the state legislatures had 7 years to favorably act upon it. U.S. Const. amend. XVIII, § 3. The U.S. Constitution's 27th Amendment was offered by the very 1st Congress in the year 1789—well prior to the year 1917—and had *no deadline* for its incorporation into the Federal Constitution. *See* U.S. Const. amend. XXVII. Consequently, the 27th Amendment's admittedly-irregular 202-year ratification process was nevertheless *proper* and was in *full accordance* with the procedures outlined in the Constitution's Article V, despite the unorthodox nature of the 27th Amendment's path to ratification.

A century ago, in 1921, the U.S. Supreme Court ruled in *Dillon v. Gloss*, 256 U.S. 368 (1921), that Congress may—if it wishes—impose a deadline upon

[3] Other legislatures that initially ratified the ERA have come to the opposite conclusion. *See, e.g.*, S. Con. Res. 4010, 44th Leg. (N.D. 2021) (noting that the ERA expired and arguing that the Archivist should not recognize the ERA as the 28th Amendment, even though North Dakota voted for it in the 1970's).

the ratification of a proposed Federal Constitutional amendment. *Dillon*, 256 U.S. at 375-76. The Court upheld the actions of the 65th Congress in submitting to the state legislatures what we know today as the 18th Amendment with a 7-year ratification deadline attached. *Id.* at 376. The Court reasoned that the 7-year limitation was "reasonable." *Id.*

As observed by the Justices in *Dillon v. Gloss*, Congress may pick and choose which amendments it desires to have ratification deadlines placed upon them and which amendments it does *not* want to impose such a time constraint upon. In 1919, Congress submitted what we know today as the 19th Amendment to the state legislatures and specifically chose, at the time of its proposal to the states, *not* to set a deadline upon its consideration within the states. *See* U.S. Const., amend. XIX. Then, in 1924, Congress, again, at the time of its proposal, chose *not* to establish a time constraint upon the still-pending Child Labor Amendment. H.R.J. Res. 184, 68th Cong. (1924). All other amendments submitted by Congress between 1917 and 1947 indeed had ratification deadlines imposed upon them. *See* U.S. Const. amends. XVIII § 3, XX § 6, XXI § 3, XXII § 2.

The 1972 Equal Rights Amendment was offered by the 92nd Congress on March 22, 1972. H.R.J. Res. 208, 92nd Congress (1972). This was well after the Court decided *Dillon*. The ERA had a 7-year ratification deadline attached. In a controversial and procedurally questionable move, the 95th Congress *allegedly*

"extended" that ratification deadline from March 22, 1979, to June 30, 1982. H.R.J. Res. 638, 95th Cong. (1978). There is no dispute in this case that 3/4ths of the States had not ratified the ERA by either deadline.

Hence, no matter how one slices it—whether 1979 or 1982—the 1972 ERA expired literally decades ago, and it was not still pending before the nation's state lawmakers in:

(a) 2017 when Nevada lawmakers purported to belatedly-ratify ERA;

(b) 2018 when Illinois lawmakers purported to belatedly-ratify ERA; and

(c) 2020 when Virginia lawmakers purported to belatedly-ratify ERA.

CONCLUSION

Because the ERA expired decades ago by its own terms, its purported ratifications by Nevada, Illinois, and Virginia in recent years were null and void. Consequently, the judgment of the trial court should be affirmed.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF ILLINOIS, et al. *Plaintiffs-Appellants,* v. DAVID FERRIERO, in his official capacity as Archivist of the United States; *Defendant-Appellee,* STATE OF ALABAMA, et al., *Intervenors for Defendant-Appellee.*	Case No.: 21-5096

AFFIDAVIT OF GREGORY WATSON

I, Gregory Watson, declare as follows:

1. In 1982, as a student at the University of Texas at Austin, I was writing a paper for a Government 310L class as to whether Congress, in 1978, possessed authority to extend the previously-agreed-to ratification deadline for the state legislatures to consider and cast votes upon the proposed 1972 Equal Rights Amendment (ERA), to the United States Constitution, from an original deadline of March 22, 1979, to a revised deadline of June 30, 1982.

2. During the course of searching for an answer to that question, I stumbled upon a library book which mentioned a proposed amendment from the year 1789 reading "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

3. I quickly realized that this 1789 proposal was technically still pending before the state legislatures for ratification but had not yet received the votes of the required number of state legislatures in order to become part of the Federal Constitution.

4. I abruptly dropped the 1972 ERA and switched the topic of my paper instead to the 1789 Congressional Compensation Amendment.

5. In my paper, I argued that the 1789 measure was still pending before the state legislatures and that it was still needed as a means to curb abuses by Congress in granting itself increases in its members' compensation.

6. I received a grade of "C" on my paper and then decided to launch a letter-writing campaign to gain the Congressional Compensation Amendment's incorporation into the Federal Constitution, which was accomplished in 1992, when 38 state legislatures finally ratified it and it thereby became the 27th Amendment to the U.S. Constitution.

7. Supporters of the 1972 ERA have pointed to my accomplishment in adding the 27th Amendment into the Federal Constitution as justification for them to persuade state lawmakers in Nevada, Illinois, and Virginia to belatedly approve the 1972 ERA in 2017, 2018 and 2020, respectively. Indeed, the texts of the Nevada 2017 resolution, and of the Illinois 2018 resolution, specifically mention the unconventional ratification of the 27th Amendment.

8. According to my research, the first time that the U.S. Congress established a deadline upon the ratification of a proposed Federal Constitutional Amendment was when the 65th Congress, in the year 1917, offered to the state legislatures for ratification what we know today as the Federal Constitution's 18th Amendment and stipulated that the state legislatures had 7 years to favorably act upon it; given that what we know today as the U.S. Constitution's 27th Amendment was offered by the very 1st Congress in the year 1789--well prior to the year 1917—and had *no deadline* for its incorporation into the Federal Constitution, the 27th Amendment's admittedly-irregular 202-year ratification process was nevertheless *proper* and was in *full accordance* with the procedures outlined in the Constitution's Article V, despite the unorthodox nature of the 27th Amendment's path to ratification.

9. A century ago, in 1921, the U.S. Supreme Court ruled in *Dillon v. Gloss*, 256 U.S. 368 (1921), that, yes, Congress may--if it wishes--impose a deadline upon the ratification of a proposed Federal Constitutional amendment and the High Court upheld the actions of the 65th Congress in submitting to the state legislatures what we know today as the 18th Amendment with a 7-year ratification deadline attached; the High Court found the 7-year limitation to be "reasonable."

10. As observed by the Justices in *Dillon v. Gloss*, Congress may pick-and-choose which amendments it desires to have ratification deadlines placed upon them and which amendments it does *not* want to impose such a time constraint upon. In 1919, Congress submitted what we know today as the 19th Amendment to the state legislatures and specifically chose, at the time of its proposal to the states, *not* to set a deadline upon its consideration within the states. Then, in 1924, Congress, again, at the time of its proposal, chose *not* to establish a time constraint upon the still-pending Child Labor Amendment. All other amendments submitted by Congress *after* 1917 indeed had ratification deadlines imposed upon them.

11. The 1972 Equal Rights Amendment was offered by the 92nd Congress on March 22, 1972—well after the year 1917—to the state legislatures for ratification with a 7-year ratification deadline attached. In a controversial and procedurally questionable move, the 95th Congress *allegedly* "extended" that ratification deadline from March 22, 1979, to June 30, 1982.

12. Hence, no matter how one slices it—whether 1979 or 1982—my opinion is that the 1972 ERA expired literally decades ago, and it was *not* still pending before the nation's state lawmakers in:

(a) 2017 when Nevada lawmakers purported to belatedly-ratify ERA;

(b) 2018 when Illinois lawmakers purported to belatedly-ratify ERA; and

(c) 2020 when Virginia lawmakers purported to belatedly-ratify ERA.

I declare under penalty of perjury that the foregoing is true and correct.

Gregory Watson

March 9, 2022

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1), this brief (including the appendix) contains 2,183 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

/s/ Matthew J. Clark
Matthew J. Clark
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on March 10, 2022, I electronically filed this document using the Court's CM/ECF system, which will serve notice of such filing on all counsel of record.

/s/ Matthew J. Clark
Matthew J. Clark
Counsel for *Amicus Curiae*